

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	:	CRIMINAL ACTION
	:	NO. 88-278-06
v.	:	
	:	
HEDMAR GOMEZ LORES	:	
	:	

O'NEILL, J.

November 2, 2011

MEMORANDUM

Now before me is the motion of defendant Hedmar Gomez Lores, pro se, seeking an amendment to his criminal judgment pursuant to Rule 35 of the Federal Rules of Criminal Procedure. On or about March 27, 1980, Gomez Lores was convicted after trial of conspiracy to distribute cocaine and to possess cocaine with intent to distribute, in violation of 21 U.S.C. § 846. On or about January 16, 1990, this Court sentenced Gomez Lores to 30 years and 5 months in prison and 5 years of supervised release. On appeal of his conviction, the Court of Appeals affirmed the judgment of this Court on January 4, 1991. Gomez Lores now asks that his judgment be amended so that the date of his offense is reflected as either September 18, 1987 or “a date range that ends prior to November 1, 1987.” He asserts that the amendment he seeks would entitle him to parole instead of good time.

The current version of Rule 35(a) allows a district court to “correct a sentence that resulted from arithmetical, technical, or other clear error within 14 days of sentencing.” Fed. R. Crim. P. 35(a). Gomez Lores’s sentence was imposed over twenty years ago, foreclosing the availability of relief under Rule 35(a). See United States v. Miller, 594 F.3d 172, 182 (3d Cir. 2010) (holding that the fourteen day deadline is jurisdictional “such that a district court lacks authority to act under the Rule outside this period”). Likewise, the version of Rule 35(a) in place

at the time of Gomez Lores's sentencing in 1990 provides no relief. Under prior Rule 35(a), a district court was required to correct or reduce a sentence "determined on appeal under 18 U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable" Fed. R. Crim. P. 35(a) (1990). Gomez Lores's case is not on remand from the Court of Appeals.

The current version of Rule 35(b) allows for a sentence reduction upon motion by the government if the defendant has provided the government with new and substantial assistance. Fed. R. Crim. P. 35(b). Similarly, under the version of Rule 35(b) in place at the time of Gomez Lores's sentencing, a district court was permitted, "on motion of the Government, . . . within one year after the imposition of a sentence, [to] lower a sentence to reflect a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense." Fed. R. Crim. P. 35(b) (1990). No such motion has been filed in this case, foreclosing the availability of relief under either version of Rule 35(b).

Further, even if Rule 35 did provide an avenue to amend Gomez Lores's sentence, and I hold that it does not, Gomez Lores's argument that the Court was not permitted to sentence him pursuant to the Sentencing Guidelines lacks merit. Gomez Lores was convicted of participation in a conspiracy that lasted from September 18, 1987 until June 23, 1988. A defendant such as Gomez Lores, convicted of a crime beginning prior to the November 1, 1987 effective date of the Guidelines but continuing beyond the effective date, is subject to sentencing under the Guidelines. See United States v. Rosa, 891 F.2d 1063, 1069 (3d Cir. 1989) (stating that where a conspiracy was ongoing the "judge was bound to apply the law in effect at the conclusion of the offense in question"); United States v. Murray, Crim. No. 89-00272-01, 1991 WL 262951, at *1

(E.D. Pa., Dec. 6, 1991) (“For conduct that ‘straddles’ the effective date, the Guidelines apply.”).

Accordingly, I will deny Gomez Lores’s motion to amend.

An appropriate Order follows.

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ORDER

AND NOW, this 2nd day of November, 2011, upon consideration of defendant's motion to amend his judgment pursuant to Rule 35 of the Federal Rules of Criminal Procedure and the Government's response thereto, it is ORDERED that defendant's motion is DENIED.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.